

STATE OF MICHIGAN
COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff-Appellant,

v

JOCELYN UNDERWOOD, RAMONA
UNDERWOOD, and ZENA ROBBINS,

Defendants-Appellees.

UNPUBLISHED
April 19, 2002

No. 227013
Wayne Circuit Court
LC No. 99-940233-CK

Before: Cooper, P.J., and Hood and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order denying its motion for a default judgment against Jocelyn and Ramona Underwood (“the Underwoods”) and entering judgment in favor of defendants in this declaratory judgment action. We reverse and remand.

Plaintiff first argues that the trial court abused its discretion by denying its motion for a default judgment against the Underwoods for failure to answer or otherwise plead in response to the complaint. We agree. A trial court’s decision on a motion for a default judgment is reviewed for an abuse of discretion. *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 642; 617 NW2d 373 (2000). However, a default judgment may be denied when necessary to “do justice to the rights and liabilities of all the parties, appearing or not.” *Dobson v Maki*, 184 Mich App 244, 251; 457 NW2d 132 (1990).

The trial court in the instant case did not address MCR 2.603 or provide any explanation for its ruling. Moreover, the record reveals that a default judgment would not have precluded defendant Robbins from litigating the question of coverage. See *Allstate Ins Co v Hayes*, 442 Mich 56; 499 NW2d 743 (1993). Plaintiff’s motion identified a proper basis for the requested default judgment and the Underwood defendants have not identified, either below or on appeal, a proper basis for denying entry of a default judgment. Thus, we find that the trial court abused its discretion in denying plaintiff’s motion for a default judgment.

Plaintiff further opines that the trial court erred in sua sponte granting summary disposition in favor of defendants on the issue of coverage. We agree. A trial court’s decision to grant summary disposition in a declaratory judgment action is reviewed de novo. *Unisys Corp v Comm’r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

The trial court decided that plaintiff was bound to provide the Underwood defendants coverage. It appears from the limited record in this case that this decision was based on the fact that plaintiff represented the Underwoods in the underlying lawsuit brought against them by defendant Robbins. Apparently, the trial court was referring to the principle that “when an insurance company undertakes the defense of its insured, it has a duty to give reasonable notice to the *insured* that it is proceeding under a reservation of rights, or the insurance company will be estopped from denying its liability.” *Kirschner v Process Design Associates, Inc*, 459 Mich 587, 593; 592 NW2d 707 (1999).

In the case at bar, there is no record support for the trial court’s conclusion that plaintiff was estopped from denying coverage. Indeed, the Underwoods never alleged a failure by plaintiff to notify them that it was proceeding under a reservation of rights. Moreover, plaintiff was never given an opportunity to show that reasonable notice had been provided. The record before the trial court at the hearing on the motion for default judgment essentially consisted of plaintiff’s complaint and Robbins’ answer. The issue of coverage was not briefed by any of the parties. Thus, the trial court not only lacked a factual basis for ruling that plaintiff was estopped from denying coverage, but also acted improperly in a procedural sense by deciding the coverage question on its own motion, without giving plaintiff prior notice or a fair opportunity to be heard. See *Haji v Prevention Ins Agency, Inc*, 196 Mich App 84, 88-90; 492 NW2d 460 (1992) (Corrigan, J., concurring). For these reasons, we find that the trial court erred in granting a declaratory judgment in favor of defendants.

Therefore, the trial court’s order denying plaintiff’s motions for a default judgment against the Underwoods and granting a declaratory judgment in favor of defendants is reversed.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Harold Hood
/s/ Kirsten Frank Kelly